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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re C.G., a Person Coming Under the  
Juvenile Court Law.

B209750  
(Los Angeles County  
Super. Ct. No. CK 64984)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

J.G.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County, Jan G. Levine, Judge. Affirmed.

Daniel G. Rooney, under appointment by the Court of Appeal, for Defendant and Appellant.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County Counsel, and Kim Nemoy, Deputy Attorneys General, for Plaintiff and Respondent.

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Father, J.G., whose past included criminal activity and marijuana use, appeals from the juvenile court's jurisdictional findings with regard to his son, C.G.<sup>1</sup> We affirm, finding no error.

### **FACTS AND PROCEDURAL HISTORY**

In April 2008, the Los Angeles County Department of Children and Family Services (Department) received a referral alleging general neglect of the newborn minor by mother. The Department substantiated the allegations of general neglect and entered into a voluntary family maintenance agreement with the parents under which they agreed to participate in services. Father agreed to take a parenting course and, if he suspected mother was abusing drugs, agreed to alert the Department and have mother leave the family residence. Father and the paternal grandmother later informed the Department that mother had left the home to attend a drug treatment program but never returned. Mother later contacted father to tell him she was not returning home, and her whereabouts became unknown.

In June 2008, the Department decided to file a Welfare and Institutions Code<sup>2</sup> section 300 petition for the minor. The petition alleged the infant was at risk based on his parents' illicit drug use, his mother's prior history with the Department regarding older children with whom she never reunified and the mother's criminal history.<sup>3</sup>

Further investigation revealed father had a criminal history, including arrests for drug-related crimes, a 1993 conviction for trespass and property damage for which he served 24 months' probation, a 1996 conviction for cultivating marijuana for which he completed a diversion program, a 2001 misdemeanor conviction for spousal abuse for which he served 36 months' probation, and a 2002 felony conviction for burglary. Father tested positive for marijuana in April 2008. He stated he used marijuana for medicinal purposes, but he could not provide supporting documentation.

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<sup>1</sup> Mother is not a party to this appeal.

<sup>2</sup> All further statutory references are to the Welfare and Institutions Code.

<sup>3</sup> Father is not the biological father of mother's older children.

The juvenile court ordered the minor detained from mother and allowed him to remain in father's custody on condition father continued to reside with the paternal grandmother. Father agreed to participate in services, including parent education, in-home counseling and drug testing.

The juvenile court held a jurisdictional and dispositional hearing in July 2008. Father admitted he had a history of criminal behavior relating to drugs and cultivating marijuana, but he stated that was in the past and he felt certain he was capable of meeting his son's needs. He admitted to using marijuana but advised he possessed a medical marijuana certificate that allowed him to legally smoke marijuana to relieve pain caused by a hernia. Father stated he was in the process of having an operation for the hernia and hoped it would alleviate his pain and need to use marijuana. He denied ever using marijuana in front of his son and indicated he would never do so. He stated he understood continued use of the drug likely was detrimental to himself and his child.

The paternal grandmother confirmed father's statements and added that father had not smoked marijuana since the minor was placed in father's custody. She stated she was certain father would not do anything to jeopardize the child's safety.

By the time of the jurisdictional hearing, father had attended five sessions of a parenting class and was continuing to attend sessions. The Department was optimistic about the child's future with father and wanted the child to remain in father's custody. However, the Department wished to keep the case open for supervision in light of father's serious past criminal problems and recent regular use of marijuana. The social worker believed the Department should continue to provide family maintenance welfare services and maintain supervision given that father had no prior experience in caring for an infant and the need to monitor father's progress in attempting to stop smoking marijuana.

The court set the matter for a contested hearing on the issue whether the court should assume jurisdiction over the minor. At the hearing, the child's attorney argued against sustaining allegations regarding father. Father offered no evidence at the hearing, and provided no evidence his use of marijuana was for medicinal purposes.

The juvenile court sustained an amended petition under section 300, subdivision (b), finding mother's drug use, criminal history and history with the Department placed the child at risk and that father had "a history of drug use and is a current user of marijuana which limits the child's father's ability to provide regular care for the child[.]" including testing positive in April 2008, which placed the child at risk. The court declared the minor a dependent, ordered no reunification services for mother, placed the child in father's custody under the Department's supervision and ordered father to submit to six random drug tests and to complete a drug rehabilitation program if father missed a test or tested positive.<sup>4</sup>

Father appeals from the jurisdictional and dispositional orders.

### STANDARD OF REVIEW

We review a juvenile court's decision to sustain a petition on behalf of a dependent child for substantial evidence. (*In re Heather A.* (1996) 52 Cal.App.4th 183, 194.) When a parent challenges a juvenile court's order on the ground of insufficiency of the evidence, the appellate court reviews the evidence in the light most favorable to the order, drawing every reasonable inference and resolving all conflicts in favor of the prevailing party. (*In re*

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<sup>4</sup> The juvenile court stated, "if [father's] not currently smoking, that's great. He can do some drug testing. If he gets his hernia operation, . . . he can do some drug testing, but right now the only evidence is we've had a positive drug test and [there] are admissions and witness statements of marijuana use. . . . [W]e have no idea how much, whether he's taking care of an infant while he's under the influence. And it is still a drug and it does impair people's faculties, so we're not talking about a 12 year old who's in school most of the day, we're talking about a baby who's 100 percent dependent on caretakers to meet his needs. And for a while, he's going to need alert caretakers who are not impaired in any way." Upon oral challenge by father's counsel to any need for drug rehabilitation, the court explained to father, "I don't have a problem with allowing you to do drug testing" or "getting a report that goes into more detail on what the conditions and circumstances are of your use, but I do have a problem with not doing anything . . . that's addressing your drug use. . . . [E]ither you're going to have to stop using and get negative tests or you're going to have to have the social worker understand and verify that your use is of a limited duration, away from the child. But until that happens, I'm going to have to supervise this." The court further explained to counsel that "[i]f [father's] truly not using now, then he'll test clean. If he's using for pain, then he should talk to the social worker about . . . how to structure his time with his child and his use of marijuana." The court additionally allowed father the option of not starting to test for 30 days.

*Dakota H.* (2005) 132 Cal.App.4th 212, 228; *In re Autumn H.* (1994) 27 Cal.App.4th 567, 575-576.) The parent has the burden of showing there is no evidence of sufficiently substantial character to support the court's order. (*In re L. Y. L.* (2002) 101 Cal.App.4th 942, 947.) It is not the task of the reviewing court to reweigh the evidence or to exercise an independent judgment on the evidence. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.)

## DISCUSSION

### ***1. The Juvenile Court Properly Asserted Jurisdiction over the Child***

Father contends the juvenile court's jurisdictional finding against him was not supported by substantial evidence because he was not an offending parent. Father admits the juvenile court properly took jurisdiction over his child because of the sustained count against mother. He argues, however, that he was not a child abuser and should not be "stained with the taint of child abuse" on account of mother's actions and failure to file an appeal. We find substantial evidence supports the trial court's jurisdictional order.

A child may be determined a dependent of the juvenile court when "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child." (§ 300, subd. (b).) A finding under section 300, subdivision (b) requires (1) neglectful conduct by the parent; (2) causation; and (3) serious physical harm or illness to the child, or a substantial risk of such harm or illness. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1396, citing *In re Rocco M.* (1991) 1 Cal.App.4th 814, 820.)

Father admits that the juvenile court had cause to assume jurisdiction over his infant son because of the sustained allegations against mother's substance abuse, failure to reunify with her other children and criminal activity. Substantial evidence thus supports the court's exercise of jurisdiction over the child due to mother's conduct.

Although the juvenile court found the child to be at further risk of serious harm due to father's admitted marijuana use, that finding was not necessary for the court to assert jurisdiction over the child. When one parent is unsuitable, the juvenile court properly may find a child comes within the jurisdiction of section 300, even if the other parent claims to be a suitable parent. (*In re Alexis H.* (2005) 132 Cal.App.4th 11, 16 [mother's admitted

conduct in endangering children found sufficient for jurisdiction notwithstanding father claimed he was nonoffending]; *In re Jeffrey P.* (1990) 218 Cal.App.3d 1548, 1553-1554 [juvenile court may take jurisdiction over a minor even if only one parent is unsuitable; social services department “is not required to prove two petitions, one against the mother and one against the father”]; see *In re Alysha S.* (1996) 51 Cal.App.4th 393, 397 [“a jurisdictional finding good against one parent is good against both”].) Such a rule is consistent with the purpose of a dependency proceeding, which is to protect the child, rather than prosecute the parent. (*In re Alysha S.*, *supra*, at p. 397.)

A reviewing court may affirm a juvenile court judgment when, as here, the evidence supports the decision on any one of several grounds. (*In re Jonathan B.* (1992) 5 Cal.App.4th 873, 875.) We do not reverse for error unless, after examining the entire cause including the evidence, it appears reasonably probable that appellant would have obtained a more favorable result absent the error. (*People v. Watson* (1956) 46 Cal.2d 818, 836; *Khan v. Medical Board* (1993) 12 Cal.App.4th 1834, 1841; *In re Jonathan B.*, *supra*, at p. 876.) Father nevertheless contends the court should not have sustained allegations directed against him as there was an insufficient showing his use of marijuana posed a risk of harm to the child. Even though the juvenile court’s additional finding regarding father’s conduct was not necessary to assert jurisdiction over the child, we find that substantial evidence supports the court’s exercise of jurisdiction based on father’s conduct.

The record shows father had a history of drug-related and criminal activities. This included arrests for drug-related crimes, a 1993 conviction for trespass and property damage for which he served 24 months’ probation, a 1996 conviction for cultivating marijuana for which he completed a diversion program, a 2001 misdemeanor conviction for spousal abuse for which he served 36 months’ probation and a 2002 felony conviction for burglary. Father tested positive for marijuana as recently as April 2008. He acknowledged he had a history of criminal behavior relating to drugs and cultivating marijuana and admittedly understood his continued use of marijuana likely was detrimental to his child.

Father’s openness regarding his past mistakes and current responsible behavior provided justification for the juvenile court’s allowing father to maintain custody of his son.

But father's admitted current use of marijuana provided additional grounds for the court's exercise of jurisdiction over the child. Although father claims the juvenile court assumed he was a "substance abuser because he was a self-identified marijuana user," the court found no such thing. The sustained count against father states that he "has a history of drug use and is a current user of marijuana *which limits [his] ability to provide regular care for the child. . . .*" (Italics added.) Regardless of the legality or illegality of father's marijuana use, there was sufficient evidence for the court to conclude supervision was necessary in light of father's admitted current use, the lack of evidence of how much father was actually using and the fact the child is an infant who is entirely dependent upon a caretaker for his well-being.

Father cites the Statistical Manual of Mental Disorders (DSM-IV) and its definition of substance abuse arguing he was not a "substance abuser" under section 300, subdivision (b) because he did not meet the DSM-IV criteria. Nothing in section 300 states that a parent must meet the DSM-IV criteria for section 300, subdivision (b) to apply.

Father also relies on *Jennifer A. v. Superior Court* (2004) 117 Cal.App.4th 1322, 1346, to buttress his claim that there was insufficient evidence of a "maladaptive pattern of substance abuse" because the Department presented no evidence of clinical substance abuse as defined in DSM-IV. *Jennifer A.* is of doubtful value under the present facts as the juvenile court's jurisdiction in *Jennifer A.* was not based on the mother's drug use, and there was no evidence linking the mother's marijuana use to her parenting or judgment skills. (*Ibid.*)

In this case, the juvenile court could reasonably find father's admitted marijuana use posed a substantial risk to "a baby who's 100 percent dependent on caretakers to meet his needs." The juvenile court was not required to view father's drug use in a vacuum. The court could properly assess father's current use of marijuana in conjunction with his history of drug-related criminal activities and other crimes, some of which were violent, and his year-long relationship with mother, who had a serious, ongoing drug problem.

Father argues there was no evidence his son suffered any harm or risk, only an "unsupported assumption" the child was at risk of harm from father's use of marijuana. The

juvenile court need not wait until there is actual harm to a child before intervening. (§ 300, subd. (b) [child subject to court’s jurisdiction if the child “has suffered, or there is a substantial *risk* that the child will suffer” serious physical harm or illness (*italics added*)].) A primary purpose of the juvenile law is protection of a child at *risk*. (*In re Jose M.* (1988) 206 Cal.App.3d 1098, 1104.)

Father relies on *In re David M.* (2005) 134 Cal.App.4th 822, 830, a case in which the mother used marijuana once while pregnant with the child. In *David M.* there was no showing of any link between the parents’ mental and substance abuse problems and a risk of harm to the children. (*Id.* at pp. 829-830.) The social agency in *David M.* performed no current investigation but relied on investigations performed several years previously with respect to the children’s older sibling merely assuming the mother was a “lost cause.” (*Id.* at p. 831.) In the present case, the Department made no such assumption. Mother had already proven she was an unfit parent. Father tested positive for marijuana only days after his son’s birth. While he claimed to smoke marijuana for “medicinal” purposes only, father could not provide documentation verifying that was the case. Father’s relationship with mother, coupled with his own drug and criminal history, posed a substantial current risk for his child.

Father’s admitted drug use and positive drug test together with his criminal history provided a substantial basis for the juvenile court’s assertion of jurisdiction, and we will not disturb the court’s decision in that regard. (Cf. *In re Eric E.* (2006) 137 Cal.App.4th 252, 260 [termination of father’s reunification services after testing positive for methamphetamine use].)

## 2. *The Juvenile Court's Dispositional Order Was Proper*<sup>5</sup>

“After the State has established parental unfitness . . . , the court may assume at the *dispositional* stage that the interests of the child and the natural parents do diverge.’ [Citation.]” (*In re Gladys L.* (2006) 141 Cal.App.4th 845, 848; see also *In re G.S.R.* (2008) 159 Cal.App.4th 1202, 1210-1211.) Under section 361, subdivision (a), when a minor is found to be a dependent child under section 300, “the court may limit the control to be exercised over the dependent child by any parent or guardian . . . .” Pursuant to section 245.5, the juvenile court, in addition to all other powers granted by law, may direct orders to the parent or parents “as the court deems necessary and proper for the best interests of . . . the minor,” and such orders “may concern the care, supervision, custody, conduct, maintenance, and support of the minor . . . .” Section 362, subdivision (a) further broadly states that the court “may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child . . . .” Section 362, subdivision (b) provides that if the court orders the parent or parents to “retain custody of the child subject to the supervision of the social worker, the parents . . . shall be required to participate in child welfare services or services provided by an appropriate agency designated by the court.” (See also Cal. Rules of Court, rule 5.695(a)(5), (6).) Moreover, under section 362, subdivision (c), the court may direct “any and all reasonable orders to the parents . . . as the court deems necessary and proper” that are “designed to eliminate those conditions that led to the court’s finding that the child is a person described by Section 300.” Under these provisions, regardless whether the court found jurisdiction as a result of mother’s conduct,

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<sup>5</sup> In his opening brief, father did not challenge the juvenile court’s disposition orders placing the child in his custody while mandating that father participate in family maintenance services. Only after the Department pointed this out in the respondent’s brief did father then belatedly challenge the court’s disposition orders, offering no explanation for his prior failure to raise this issue. We do not consider an issue raised for the first time in a reply brief absent justification for not presenting the issue earlier. (*Save the Sunset Strip Coalition v. City of West Hollywood* (2001) 87 Cal.App.4th 1172, 1181, fn. 3; *Shade Foods, Inc. v. Innovative Products Sales & Marketing, Inc.* (2000) 78 Cal.App.4th 847, 894-895, fn. 10.)

father's conduct or both, the juvenile court could properly require father to participate in appropriate child welfare services to maintain custody of his son.

Provisions such as these in the Welfare and Institutions Code "have been broadly interpreted to authorize a wide variety of remedial orders intended to protect the safety and well-being of dependent children . . . ." (*In re Carmen M.* (2006) 141 Cal.App.4th 478, 486; *Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 309.) The juvenile court has wide discretion to determine what would best serve and protect the child's interest and to fashion an appropriate dispositional order in line with this discretion. (*In re Neil D.* (2007) 155 Cal.App.4th 219, 224-225.) The court therefore did not err in requiring father to submit to random drug testing and to undergo a drug program should father test positive or miss a test.

### **DISPOSITION**

The orders are affirmed.

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FLIER, J.

We concur:

RUBIN, Acting P. J.

BIGELOW, J.